

REMARKS

Applicants respectfully request reconsideration in light of the remarks and amendments presented herein. Claims 1-24 are pending. Claims 1-24 are rejected.

Independent Claims 1 and 13 have been amended. No new matter has been added. For example, support for the amendments can be found in the instant Application at page 10 lines 1-7, page 21 lines 1-8, page 23 lines 18-28, among other places.

THE DECISION OF THE BOARD

The decision of the board dated July 29, 2010 states on page 4 last paragraph, “the Appeal Brief refers to element 210 in figure 2 of the disclosed invention, as the basis of the reassigning clause of this claim. Specification page 3 indicates that figures 1 and 2 relate to conventional ways of delivering media...” Applicants respectfully submit that, as indicated in Applicants’ response to the first Office Action mailed April 9, 2007, support for the reassigning can be found in the instant application serial no. 10/613,905 at line 25 on page 18 to line 10 on page 19, which is not conventional. Therefore, “reassigning,” as recited, is not conventional.

35 U.S.C. 103

Claims 1-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,407,680 by Lai et al. (referred to herein as “Lai”) in view of “Distributing Media Transformation Over Multiple Media Gateways” by Ooi et al. (referred to herein as “Ooi”). Applicants have reviewed the asserted art and respectfully submit that the asserted art does not describe, teach or suggest the instant Application’s claims for at least the following rationale.

LAI

This section describes Applicants’ understanding of what Lai teaches. Lai teaches an engine for publishing content. A content provider publishes their content to the engine causing a copy of the original content to be stored in an archive associated with the engine and a URL for accessing the archived copy to be

associated with a web-site (Col. 12 line 47 to Col. 13line 3, Col. 13 lines 37-45, Col. 14 lines 10-14). A user can select the content by clicking on the URL (Col. 14 lines 10-14). In response to the user clicking on the URL, the engine transcodes the archived copy of the original content into a destination type that is compatible with the user's computer and delivers the transcoded content to the user's computer (Col. 14 lines 20-27, Col. 9 lines 11-29).

Therefore, Applicants understand Lai's intended purpose is for publishing content. Lai's principle of operation in publishing the content is for the engine to receive and archive a copy of the content at the engine and then to setup a URL that a user can select to request the content. Since Lai provides a URL for a user to select the content as a part of the engine publishing the content by receiving and archiving a copy of the original content, Applicants' understand Lai to require receiving the original content at the engine before the user can request the content as a part of achieving Lai's intended purpose of publishing content.

Ooi

This section describes Applicants' understanding of what Ooi teaches. Ooi teaches in the abstract, among other places, that a user requests a computation. Then the system distributes the computation over multiple gateways for execution. The content is transformed as it flows through the gateways.

Therefore, Applicants understand Ooi to require gateways for transforming the content. Applicants respectfully submit that gateways receive data from a source and transmit the data to a destination in response to the data being requested. Therefore, Applicants understand Ooi to require that the gateways receive the content after the user requests the content.

Further, Applicants understand Ooi to rely on propagation time and to teach away from using geographic locations since Ooi states that previous study [4] indicates that there is little correlation between geographical location, topology or number of hops (second paragraph under section 3.1 on page 162). Applicants

respectfully submit that Ooi's "distance" is the difference between timestamps (lines 7-9 of first column on page 163). Therefore, Applicants understand Ooi to teach away from using geographical locations.

NO MOTIVATION TO COMBINE LAI AND OOI

This section discusses why Applicants believe that there is no motivation to combine Lai and Ooi because Applicants understand Lai and Ooi to teach away from each other.

Applicants respectfully submit that "[i]t is improper to combine references where the references teach away from their combination" (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Further, "[a] reference will teach away if it suggests that the line of development flowing from the reference's disclosures is unlikely to be productive of the result sought by the applicant. *In re Gurley*, 31 USPQ2d 1130 (Fed. Cir. 1994)." Applicants respectfully submit that there is no motivation to combine the teachings of Lai and Ooi, because Lai and Ooi teach away from each other.

As discussed herein, Applicants understand Lai's intended purpose is for publishing content. Lai's principle of operation in publishing the content is for the engine to receive and archive a copy of the content at the engine and then to setup a URL that a user can select to request the content. Since Lai provides a URL for a user to select the content as a part of the engine publishing the content by receiving and archiving a copy of the original content, Applicants' understand Lai to require receiving the original content at the engine before the user can request the content as a part of achieving Lai's intended purpose of publishing content.

In contrast to Lai's receiving content before the user requests the content, Applicants understand Ooi to teach that the gateways receive the content after the user requests the content. Therefore, Applicants respectfully submit that Lai and Ooi teach away from each other. Since Lai and Ooi teach away from each other, there is no motivation to combine Lai and Ooi to render embodiments of the instant Application's claims obvious.

NO MOTIVATION TO COMBINE OOI WITH ANY OTHER ART

This section describes Applicants' understanding of why there is no motivation to combine Ooi with any other asserted art because Applicants understand Ooi to teach away from Claim 1.

Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Further, “[a] reference will teach away if it suggests that the line of development flowing from the reference’s disclosures is unlikely to be productive of the result sought by the applicant. *In re Gurley*, 31 USPQ2d 1130 (Fed. Cir. 1994).” Applicants respectfully submit that there is no motivation to combine the teachings of Lai with any other asserted art, because Lai teaches away from the suggested modification.

As discussed herein, Applicants understand Ooi to teach away from using geographical locations since Ooi states that a previous study [4] indicates that there is little correlation between geographical location, topology or number of hops (second paragraph under section 3.1 on page 162). Since Ooi teaches away from geographical location, Ooi relies on propagation time (1st sentence of second paragraph under section 3.1 on page 162).

In contrast to Ooi, Claim 1 recites, “receiving a request for a streaming media service from a mobile client, said streaming media service comprising a plurality of media services components...in response to said mobile client moving, reassigning said media session to a different service node selected from the plurality of services nodes while continuing to provide the streaming media to the client” (emphasis added).

Since Ooi teaches away from using geographical locations and Claim 1 recites, “...mobile client...in response to said mobile client moving, reassigning said media session,” Applicants respectfully submit that Ooi teaches away from Claim 1. Since Ooi teaches away from Claim 1, Applicants respectfully submit that there is no motivation to combine Ooi with any other asserted art.

SUMMARY

Applicants respectfully submit that independent Claim 1 is patentable for at least the reasons that Applicants understand Lai and Ooi to teach away from each other and understand Ooi to teach away from Claim 1. Applicants respectfully submit that independent Claim 13 is patentable for similar reasons that independent Claim 1 is patentable.

Claims 2-12 depend on independent Claim 1. Claims 14-24 depend on independent Claim 13. These dependent claims include all of the features of their respective independent claims. Therefore, these dependent claims should be patentable for at least the reasons that their respective independent claims should be patentable.

CONCLUSION

In light of the above listed amendments and remarks, reconsideration of the rejected claims is requested. Based on the arguments and amendments presented above, it is respectfully submitted that Claims 1-24 overcome the rejections of record. For reasons discussed herein, Applicants respectfully request that Claims 1-24 be considered by the Examiner. Therefore, allowance of Claims 1-24 is respectfully solicited.

Should the Examiner have a question regarding the instant amendment and response, the Applicants invite the Examiner to contact the Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,
WAGNER BLECHER LLP

Dated: 09/29/2010

/John P. Wagner, Jr./

John P. Wagner, Jr.
Registration No. 35,398

Address:

Westridge Business Park
123 Westridge Drive
Watsonville, California 95076 USA

Telephone:

(408) 377-0500 Voice
(408) 234-3649 Direct/Cell
(831) 722-2350 Facsimile